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OFFICE OF PETITIONS

In re Application of :
Edward J. Mack et al :
Application No. 09/833,755 :
Filed: April 11, 2001 :
Attorney Docket No. 55531 (45676) :

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

CORRECTED DECISION

This is a corrected decision on the petition, filed December 29, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing¹. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen months publication country on July 27, 2001. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen months publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

¹ In view of a telephone call that was made to Mr. Irvin Dingle from Mr. Mark Russett on February 15, 2005 stating the correct filing date of the subsequently-filed foreign or international application is July 27, 2001 and not February 7, 2002.

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122 (b) (2) (B) (i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of May 5, 2005 has been mailed with the decision on February 1, 2005.

Any inquiries concerning this decision may be directed to Irvin Dingle at (571) 272-3210.



Irvin Dingle
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy